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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/672,252	09/28/2000	HELMUT JANSEN	21534	6934

535 7590 08/01/2003

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 08/01/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/672,252

Applicant(s)

JANSEN ET AL.

Examiner

Virginia Manoharan

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claimed language "connector ... enabling relative adjustment of said wall elements in planes thereof to enable said partition to span between opposite sides of said column ..." is nowhere in the specification. The adjustment of height or width could be taken as non-spanning between opposite sides of said column. However if support can be pointed-out, at least, the specification is objected to as failing to provide proper antecedent basis for the above limitation as the above subject matter is not positively recited in the specification.. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claimed "said slot" in claims 3-7 lacks proper antecedent basis for support in the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-9, 13-14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaibel et al (5,914,012) in view of De (3135709).

The about references are applied for the same combined reasons as set forth at pages 3-4 of the previous office action.

The claimed "slot" e.g., in claim 19 is rendered obvious by the gap disclosed at col. 3, lines 3-4 of Kaibel.

Claims 4-7, 10-12 and 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed April 15, 2003 have been fully considered but they are not persuasive.

Applicants' following arguments such as: "... The KAIBEL et al '012 reference also discloses a partition but one which has a plurality of wall parts disposed one above the other and not , however, enabling relative adjustment thereof..... While indeed the two wall structures of this KAIBEL et al reference is such that it might facilitate assembly of the column, the reference does not in any way suggest that the two wall elements can be relatively adjusted to enable the partition to span between opposite sides of the column and thus the reference does not suggest the key feature of claims 1 and 19. Indeed, in KAIBEL et al '012, the partition is of fixed width, must have a width that is exactly that of the column interior and is fixed in the column. A change in width is not possible.." are not persuasive of patentability because of the following reasons.

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Art Unit: 1764

However, to make adjustable what is structurally fixed before is of no patentable moment. By now, it is well-settled that provision of adjustability where needed is not a patentable advance. See *In re Brandt* 17 USPQ 295.

Nonetheless, the disclosure in col. 3, lines 25-27 of Kaibel that the dividing walls can be made longer would at least be suggestive of the argued "enabling relative adjustment" and the further argued "to enable the partition to span between opposite sides of the column. Furthermore, the gap disclose at col. 3 lines 3-5 and Fig. 7 would suggest the claimed "slot". Claim 1 is also not limited to the argued "slot" and therefore the argument that "....Neither of the two rigid attached walls has a slot ..." is not commensurate with the claimed invention.

Moreover, the Strzelski's reference was not cited for reasons as argued, i.e., to suggest the relative adjustment, but for reasons of record, i.e., as connector.

Thus, in the absence of anything which may be "new" or "unexpected result", a prima facie case of obviousness has been established by the art and has not been rebutted.

Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicant's amendments, or the Brief do not suffice. *In re Lindner*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). *In re Wood*, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

The arguments with regards to Stout and Kaibel et al '819 are moot said those alternative references have been dropped from the above rejection.

Art Unit: 1764

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Blackburn et al discloses a wall partition connector.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 703-308-3844. The examiner can normally be reached on Tuesday-Friday from 7:30 am to 6:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-4311. The fax phone numbers

Art Unit: 1764

for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9462 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

V. Manoharan/mn  
July 31, 2003

  
1764  
7/31/03